

Company and Business Names etc Bill 2012
Third Reading approved

5.2. Mr Henderson to move:

That the Company and Business Names etc Bill 2012 be read the third time and be sent to the Council.

The Deputy Speaker: We move on to Item 5.2, Bills for Third Reading, the Company and Business Names etc Bill 2012. I call upon Mr Henderson, Member for Douglas North.

Mr Henderson: Gura mie eu, Lhiass-loayreyder.

Lhiass-loayreyder and Hon. Members, this Bill is the Company and Business Names etc Bill 2012. The Bill will apply to every case in which approval must be sought for the use of a name by a body corporate or unincorporate.

Before I continue with the Third Reading, I would like to clarify the position in respect of the query raised by the Hon. Member for Onchan, Mr Quirk, at the last reading. Mr Quirk queried what format the register of sensitive names would take, and I can confirm that this will be an electronic register that will be available to view on the main Companies Registry website.

Lhiass-loayreyder, turning to the Bill itself, the Bill seeks to address the recommendation of the IMF arising from the 2009 Report on the Isle of Man. The recommendation concerned the lack of regulations surrounding the use of certain words and phrases, such as ‘bank’ or ‘banking’ that are ordinarily associated with a specific regulated activity. This Bill seeks to replace the existing guidance issued by the Companies Registry with legislation. The words and phrases that can ordinarily be used in the names of bodies corporate and unincorporate that are registered in the Isle of Man will be put into legislation.

This created an opportunity to review and update the existing regime in respect of name approvals across the various Acts. The various Acts to which the existing regime applies span a period of over 100 years. At its most basic level, the Bill consolidates the existing regime across the various Acts into a single, central piece of legislation.

The Bill will also redefine the various names given to the person with authority in respect of the approvals, and this is achieved through the creation of the role of the appropriate name approval authority. This term will apply across all relevant Acts. Conventions that have arisen over time, such as the ability to reserve a name, will be clarified and put into the legislation to provide certainty.

The Bill contains 14 clauses and one schedule. The schedule sets out the consequential amendments that would be required to be made to other Acts.

Clauses 1 and 2 contain the opening provisions of the Bill and allow for commencement by Appointed Day Orders.

Clause 3 defines certain words and expressions used in the Bill. Notably, the term ‘appropriate name approval authority’ is defined.

Clause 4 lists all persons, bodies corporate and unincorporate to which the Bill applies. This includes bodies corporate and unincorporate established or registered under various Acts, including the Companies Act 1931 and the Companies Act 2006, and various other Acts.

Clause 5 sets out when it is necessary to obtain approval to use a name. The most common circumstances are either on establishment, registration, incorporation or changing the existing name.

Clause 6 confirms that application must be in the required form of the appropriate name approval authority. This clause also introduces a new power, but not an obligation, that will permit a fee to be charged on application.

Clause 7 replicates existing powers that permit outright approval of use of a name, approval subject to conditions being met, or for refusal of permission. This clause also replaces the existing practice of consulting with interested parties, such as Statutory Boards and Government Departments, with a statutory duty to consult these stakeholders. A new power under clause 7(7) gives the appropriate name approval authority ultimate discretion to consent to the use of a name. In circumstances where consent has been given but would ordinarily have been withheld, the name must be placed on a public register of such cases.

Clause 8 replicates the existing powers which consider that an approved name may be made subject to certain conditions or additional conditions, or conditions may be varied or revoked.

Clause 9 again reproduces existing powers that currently appear in the various Acts. The power to direct that a person change its name is retained as it is now. Reasons must be given for making the direction. The existing power to impose a change of name is also retained.

Clause 10 places on a statutory footing a convention that has arisen over time. The reservation of names for a period of three months has been permitted, despite there being no statutory basis for doing so.

Clause 11 considers appeals against decisions of the appropriate name approval authority. The persons who and circumstances in which an appeal can be made are set out. Appeals must be made to the court and the ruling is binding on both the appellant and the appropriate name approval authority.

Clause 12 gives the Treasury wide-ranging powers to make regulations on various matters included in the Bill. The most important of these is the power to replace the existing guidance on restricted words and phrases with legislation.

Clause 13 sets out the consequential amendments that will be needed as a result of this Bill. These are set out in the schedule to the Bill. This clause also contains an automatic repeal provision. This will not affect the operation of any of the amendments under this section. This is a housekeeping exercise that aims to declutter the statute books.

Clause 14 contains certain savings provisions.

Lhiass-loayreyder, I beg to move the Third Reading.

The Deputy Speaker: Member for Ayre, Mr Teare.

Mr Teare: I beg to second and to reserve my remarks, sir.

The Deputy Speaker: Hon. Member for Douglas East, Mrs Cannell.

Mrs Cannell: Thank you, Mr Deputy Speaker.

I would just like to congratulate the Member for the way in which he has handled this Bill; the comprehensive way in which he has laid out Second Reading, clauses, and today's Third and final Reading; and also to praise him for highlighting clause 12 regulations; but most importantly, that the regulations have to be laid before Tynwald and have to be approved by Tynwald – very important provision in any kind of regulation coming forward, which impacts upon our community.

So I congratulate him.

The Deputy Speaker: Hon. Member for Michael, Mr Cannan.

Mr Cannan: Can I ask the mover of this just to clarify for me – it is quite late in the day, I appreciate this – but what the impact would be on the fees for those corporate services providers who effectively bulk register names and store often many hundreds of names well in advance, in order to make life easier for their clients. If he could just clarify the impact and the cost potential or new cost, that would be very helpful.

Thanks very much.

The Deputy Speaker: Mover to reply.

Mr Henderson: Gura mie eu, Lhiass-loayreyder.

Firstly, in response to the Hon. Member for Douglas East, Mrs Cannell, I thank her for the supportive comments. Yes, she is quite right, regulations will have to come before Tynwald as a final stage in this, so that there can be a further level of smoothening, which is what we wanted.

With regard to Mr Cannan's comments, we have been through in detail the clauses, where I discussed each separate item, including this, in much more detail, and tried to make it clear with regard to the effects.

The first effect is that the custom and practice procedures that are ongoing at the minute, with regard to name reservations and so on that he alludes to are just that, and this puts it on to a formal footing. It makes it clearer, more transparent and places this practice into formal legislation. That will require anybody so affected or in the future, that they will have to do the form filling, basically as if they were applying for a new name every three months that this is rolled over.

So, the effect, basically, is that it is going to be a little bit more paperwork, a little bit more due diligence and there is a little bit more of an audit trail, which is exactly the kind of thing that the IMF are looking for. We have gone a little bit further in what we are doing here, but it gave us the opportunity to do some housekeeping, while we were at it, so that it puts custom and practice onto a formal footing.

With regard to the fees, as I have tried to make clear, it is a provision that is there. It is a 'maybe', it is not a given, but it is there in the future. So I cannot foresee currently that there would be any fee effect; but it is there, should the powers that be wish to bring in any charging process in the future. It saves coming back and moving a small Bill again or an amendment process. That is why it is there. There is no current envisaged charging regime to the Hon. Member's queries. (**Mr Teare:** Hear, hear.)

Gura mie eu, Lhiass-loayreyder.

The Deputy Speaker: Hon. Members, the motion is as on the Order Paper that the Company and Business Names etc Bill 2012 be read a third time. All those in favour, please say aye; those against, no. The ayes have it. The ayes have it.